

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 567**

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**Introduced by Assembly Member Villines**

February 25, 2009

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An act to amend Sections 8545.1, 8545.2, 8545.4, 8546.2, 8547.2, 8547.4, 8547.5, 8547.6, 8547.7, and 8548.9 of, and to add Section 8546.10 to, the Government Code, relating to government practices.

### LEGISLATIVE COUNSEL'S DIGEST

AB 567, as amended, Villines. Government practices.

(1) Existing law sets forth the duties and powers of the Bureau of State Audits and makes reference to audits and investigative audits. Existing law also prohibits the State Auditor or his or her employees from releasing to the public, among other things, any papers, correspondence, or any substantive information pertaining to any audit not completed.

This bill would revise the authority of the Bureau of State Audits to specifically perform investigations and would delete the reference to investigative audits. The bill would make conforming changes.

The bill would establish the Clearinghouse for Government Innovation and Improvement Program, as resources become available, within the Bureau of State Audits to receive and review, in good faith, submissions from the public that recommend how to improve the operations of the state or how to direct the focus of the state relative to its essential functions. The State Auditor would be required to take reasonable

measures to create and maintain public awareness of the program as resources become available.

(2) The California Whistleblower Protection Act sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would add an individual appointed by the Legislature who is not an employee of the Legislature to the list of state employees covered by these provisions. The bill would change the definition of improper governmental activity to include any activity by an employee that is undertaken inside a state office or that is undertaken ~~in any place other than~~ *outside* a state office that directly relates to ~~any responsibility of state government and specifically~~ *would change the definition of protected disclosure to specifically* include any good faith communication to the Bureau of State Audits alleging an improper governmental activity and ~~the delivery of any evidence delivered to the Bureau of State Audits in support of an~~ *the* allegation. After receiving a copy of the State Auditor's investigative report, the appointing power would have 60 days to serve a notice of adverse action upon the employee who is the subject of the investigative report. The State Auditor also would be authorized to provide *to the employees' appointing power* any evidence gathered during the investigation that ~~might be in his or her judgment is~~ necessary to support an adverse action. The State Auditor would be required to create, as specified, the means for the submission of reports of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and by electronic transmission through an Internet Web site portal. The State Auditor may include recommended actions to prevent the continuation or recurrence of the improper governmental activity with the report that details the improper governmental activity to the head of the employing agency. The State Auditor would be required to report, as specified, to the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, and the Department of Finance with respect to each recommendation he or she has made, as specified, that was reported more than one year ago and that has not been fully implemented by the affected agency. The bill also would make conforming changes.

(3) This bill also would declare that the provisions of this act shall impose no cost on the state and shall be implemented solely using existing resources.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8545.1 of the Government Code is  
2 amended to read:

3 8545.1. (a) The State Auditor, and any employee or former  
4 employee of the bureau, shall not divulge or make known to any  
5 person not employed by the bureau in any manner not expressly  
6 permitted by law any particulars of any record, document, or  
7 information the disclosure of which is restricted by law from  
8 release to the public. This prohibition includes, but is not limited  
9 to, the restrictions on the release of records, documents, or  
10 information set forth in Section 8545.

11 (b) Subdivision (a) also applies to either of the following:

12 (1) Any person or business entity that is contracting with or has  
13 contracted with the bureau and to the employees and former  
14 employees of that person or business entity.

15 (2) The officers and employees of and any person or business  
16 entity that is contracting with or has contracted with any state or  
17 local governmental agency or publicly created entity that has  
18 assisted the bureau in the course of any audit or investigation or  
19 that has received a draft copy of any report or other draft document  
20 from the bureau for comment or review.

21 (c) Any officer, employee, or person who discloses the  
22 particulars of any record, document, or other information in  
23 violation of this section is guilty of a misdemeanor.

24 SEC. 2. Section 8545.2 of the Government Code is amended  
25 to read:

26 8545.2. (a) Notwithstanding any other provision of law, the  
27 State Auditor during regular business hours shall have access to  
28 and authority to examine and reproduce, any and all books,  
29 accounts, reports, vouchers, correspondence files, and other  
30 records, bank accounts, and money or other property, of any agency  
31 of the state, whether created by the California Constitution or  
32 otherwise, any local governmental entity, including any city,

1 county, and school or special district, and any publicly created  
2 entity, for any audit or investigation. Any officer or employee of  
3 any agency or entity having these records or property in his or her  
4 possession, under his or her control, or otherwise having access  
5 to them, shall permit access to, and examination and reproduction  
6 thereof, upon the request of the State Auditor or his or her  
7 authorized representative.

8 (b) For the purposes of access to and examination and  
9 reproduction of the records and property described in subdivision  
10 (a), an authorized representative of the State Auditor is an employee  
11 or officer of the state or local governmental agency or publicly  
12 created entity involved and is subject to any limitations on release  
13 of the information as may apply to an employee or officer of the  
14 state or local governmental agency or publicly created entity. For  
15 the purpose of conducting any audit or investigation, the State  
16 Auditor or his or her authorized representative shall have access  
17 to the records and property of any public or private entity or person  
18 subject to review or regulation by the public agency or public entity  
19 being audited or investigated to the same extent that employees  
20 or officers of that agency or public entity have access. No provision  
21 of law providing for the confidentiality of any records or property  
22 shall prevent disclosure pursuant to subdivision (a), unless the  
23 provision specifically refers to and precludes access and  
24 examination and reproduction pursuant to subdivision (a). This  
25 subdivision does not apply to records compiled pursuant to Part 1  
26 (commencing with Section 8900) or Part 2 (commencing with  
27 Section 10200) of Division 2.

28 (c) Any officer or person who fails or refuses to permit access  
29 and examination and reproduction, as required by this section, is  
30 guilty of a misdemeanor.

31 SEC. 3. Section 8545.4 of the Government Code is amended  
32 to read:

33 8545.4. (a) In connection with any audit or investigation  
34 conducted by the State Auditor, the State Auditor or his or her  
35 designee, may do any of the following:

- 36 (1) Administer oaths.  
37 (2) Certify to all official acts.  
38 (3) Issue subpoenas for the attendance of witnesses and the  
39 production of papers, books, accounts, or documents, or for the

1 making of oral or written sworn statements, in any interview  
2 conducted as part of an audit or investigation.

3 (b) Any subpoena issued under this section extends as process  
4 to all parts of the state and may be served by any person authorized  
5 to serve process of courts of record or by any person designated  
6 for that purpose by the State Auditor or his or her designee. The  
7 person serving this process may receive compensation as allowed  
8 by the State Auditor or his or her designee, not to exceed the fees  
9 prescribed by law for similar service.

10 (c) Notwithstanding Section 7470, 7474, or 7491, subpoenas  
11 issued under this section for financial records of financial  
12 institutions concerning customers of financial institutions or for  
13 information contained in those records shall not be subject to the  
14 requirement or conditions of Section 7474.

15 SEC. 4. Section 8546.2 of the Government Code is amended  
16 to read:

17 8546.2. (a) The State Auditor shall request that any state  
18 agency, as defined in Section 11000, whether created by the  
19 California Constitution or otherwise, any local governmental  
20 agency, including any city, county, city and county, school, or  
21 special district, or any publicly created entity, that is the subject  
22 of an audit or investigation conducted pursuant to this chapter  
23 provide updates on its progress in implementing the  
24 recommendations made by the State Auditor, at intervals prescribed  
25 by the State Auditor.

26 (b) Any state agency described in subdivision (a) shall provide  
27 the State Auditor, in the form prescribed by the State Auditor, with  
28 updates on implementation of recommendations as described in  
29 subdivision (a).

30 SEC. 5. Section 8546.10 is added to the Government Code, to  
31 read:

32 8546.10. (a) Notwithstanding Section 8544.5, as resources  
33 become available, the State Auditor shall establish the  
34 Clearinghouse for Government Innovation and Improvement  
35 Program.

36 (b) Upon establishing the program, the State Auditor shall create  
37 the means for members of the public to submit recommendations  
38 for improving the operations of the state or for directing the focus  
39 of the activities of the state toward the essential functions of  
40 government both via mail or other carrier and electronic submission

1 through an Internet Web site portal. The State Auditor shall review,  
2 in good faith, submissions that recommend improvements to the  
3 efficiency of government operations or that recommend an  
4 approach that the state can take relative to an essential function of  
5 government. At the discretion of the State Auditor, selected  
6 recommendations shall be forwarded to the Governor, the Director  
7 of Finance, and the majority and minority party leaders in both  
8 houses of the Legislature for review.

9 (c) Upon establishing the Clearinghouse for Government  
10 Innovation and Improvement Program, as resources become  
11 available, the State Auditor shall take reasonable measures to create  
12 and maintain public awareness of the program.

13 SEC. 6. Section 8547.2 of the Government Code is amended  
14 to read:

15 8547.2. For the purposes of this article, the following terms  
16 have the following meanings:

17 (a) "Employee" means any individual appointed by the Governor  
18 or employed or holding office in a state agency as defined by  
19 Section 11000, including, for purposes of Sections 8547.3 to  
20 8547.7, inclusive, any employee of the California State University  
21 or an individual appointed by the Legislature who is not an  
22 employee of the Legislature.

23 (b) "Improper governmental activity" means any activity by a  
24 state agency or by an employee that is undertaken inside a state  
25 ~~office or that is undertaken in any place other than a state office~~  
26 ~~that directly relates to any responsibility of state government office~~  
27 *or, if undertaken outside a state office, that directly relates to state*  
28 *government*, whether or not that action is within the scope of his  
29 or her employment, and that (1) is in violation of any state or  
30 federal law or regulation, including, but not limited to, corruption,  
31 malfeasance, bribery, theft of government property, fraudulent  
32 claims, fraud, coercion, conversion, malicious prosecution, misuse  
33 of government property, or willful omission to perform duty, or  
34 (2) is economically wasteful, or involves gross misconduct,  
35 incompetency, or inefficiency. For purposes of Sections 8547.4,  
36 8547.5, 8547.10, and 8547.11, "improper governmental activity"  
37 includes any activity by the University of California or by an  
38 employee, including an officer or faculty member, who otherwise  
39 meets the criteria of this subdivision.

1 (c) “Person” means any individual, corporation, trust,  
2 association, any state or local government, or any agency or  
3 instrumentality of any of the foregoing.

4 (d) “Protected disclosure” means any good faith communication  
5 that discloses or demonstrates an intention to disclose information  
6 that may evidence (1) an improper governmental activity or (2)  
7 any condition that may significantly threaten the health or safety  
8 of employees or the public if the disclosure or intention to disclose  
9 was made for the purpose of remedying that condition. Protected  
10 disclosure specifically includes any good faith communication to  
11 the Bureau of State Audits alleging an improper governmental  
12 activity and ~~the delivery of~~ any evidence *delivered* to the Bureau  
13 of State Audits in support of ~~an~~ *the* allegation.

14 (e) “Illegal order” means any directive to violate or assist in  
15 violating a federal, state, or local law, rule, or regulation or any  
16 order to work or cause others to work in conditions outside of their  
17 line of duty that would unreasonably threaten the health or safety  
18 of employees or the public.

19 (f) “State agency” is defined by Section 11000. “State agency”  
20 includes the University of California for purposes of Sections  
21 8547.5 to 8547.7, inclusive, and the California State University  
22 for purposes of Sections 8547.3 to 8547.7, inclusive.

23 SEC. 7. Section 8547.4 of the Government Code is amended  
24 to read:

25 8547.4. The State Auditor shall administer this article and shall  
26 investigate and report on improper governmental activities. If,  
27 after investigating, the State Auditor finds that an employee may  
28 have engaged or participated in improper governmental activities,  
29 the State Auditor shall prepare an investigative report and send a  
30 copy of the investigative report to the employee’s appointing  
31 power. Subject to the limitations of Section 8547.5, the State  
32 Auditor ~~also~~ may provide *to the employee’s appointing power* any  
33 evidence gathered during the investigation that ~~might be~~, *in the*  
34 *judgment of the State Auditor*, is necessary to support an adverse  
35 action or an action recommended pursuant to subdivision (a) of  
36 Section 8547.7. Within 60 days after receiving a copy of the State  
37 Auditor’s investigative report, the appointing power shall either  
38 serve a notice of adverse action upon the employee who is the  
39 subject of the investigative report or set forth in writing its reasons  
40 for not taking adverse action. The appointing power shall file a

1 copy of the notice of adverse action with the State Personnel Board  
2 in accordance with Section 19574, and shall submit a copy to the  
3 State Auditor. If the appointing power does not take adverse action  
4 within 60 days of receiving a copy of the State Auditor's  
5 investigative report, it shall submit its written reasons for not doing  
6 so to the State Auditor and the State Personnel Board, and adverse  
7 action may be taken as provided in Section 19583.5. Any employee  
8 who is served with a notice of adverse action may appeal to the  
9 State Personnel Board in accordance with Section 19575.

10 SEC. 8. Section 8547.5 of the Government Code is amended  
11 to read:

12 8547.5. (a) The State Auditor shall create the means for the  
13 submission of allegations of improper governmental activity both  
14 by transmission via mail or other carrier to a specified mailing  
15 address and electronic submission through an Internet Web site  
16 portal. The State Auditor may request that a person submitting an  
17 allegation provide his or her name and contact information and  
18 provide the names and contact information for any persons who  
19 could help to substantiate the claim. However, the State Auditor  
20 shall not require any person submitting an allegation to provide  
21 his or her name or contact information and shall clearly state on  
22 the agency Web site that this information is not required in order  
23 to submit an allegation.

24 (b) Upon receiving specific information that any employee or  
25 state agency has engaged in an improper governmental activity,  
26 the State Auditor may conduct an investigation of the matter. The  
27 identity of the person providing the information that initiated the  
28 ~~investigation, or of any person who the State Auditor has~~  
29 ~~determined to be a confidential informant, shall not be disclosed~~  
30 ~~investigation, or of any person providing information in confidence~~  
31 ~~to further an investigation, shall not be disclosed~~ without the  
32 written permission of the person providing the information except  
33 that the State Auditor may make the disclosure to a law  
34 enforcement agency that is conducting a criminal investigation.

35 SEC. 9. Section 8547.6 of the Government Code is amended  
36 to read:

37 8547.6. The State Auditor may request the assistance of any  
38 state department, agency, or employee in conducting any  
39 investigation required by this article. If an investigation conducted  
40 by the State Auditor involves access to confidential academic peer



1 review records of University of California academic personnel,  
2 these records shall be provided in a form consistent with university  
3 policy effective on August 1, 1992. No information obtained from  
4 the State Auditor by any department, agency, or employee as a  
5 result of the State Auditor's request for assistance, nor any  
6 information obtained thereafter as a result of further investigation,  
7 shall be divulged or made known to any person without the prior  
8 approval of the State Auditor.

9 SEC. 10. Section 8547.7 of the Government Code is amended  
10 to read:

11 8547.7. (a) If the State Auditor determines that there is  
12 reasonable cause to believe that an employee or state agency has  
13 engaged in any improper governmental activity, he or she shall  
14 report the nature and details of the activity to the head of the  
15 employing agency, or the appropriate appointing authority, and  
16 may include recommended actions to prevent the continuation or  
17 recurrence of the activity. If appropriate, the State Auditor shall  
18 report this information to the Attorney General, the policy  
19 committees of the Senate and Assembly having jurisdiction over  
20 the subject involved, and to any other authority that the State  
21 Auditor determines appropriate.

22 (b) The State Auditor shall not have any enforcement power.  
23 In any case in which the State Auditor submits a report of alleged  
24 improper activity to the head of the employing agency or  
25 appropriate appointing authority, that individual shall report to the  
26 State Auditor with respect to any action taken by the individual  
27 regarding the activity, the first report being transmitted no later  
28 than 60 days after the date of the State Auditor's report and  
29 monthly thereafter until final action has been taken.

30 (c) The State Auditor shall keep confidential every investigation,  
31 including, but not limited to, all investigative files and work  
32 product, except that the State Auditor may issue any report of an  
33 investigation that has been substantiated, keeping confidential the  
34 identity of the individual or individuals involved, or, subject to  
35 the limitations of Section 8547.5, release any findings or evidence  
36 supporting any findings resulting from an investigation conducted  
37 pursuant to this article that is deemed necessary to serve the  
38 interests of the state.

1 (d) This section does not limit any authority conferred upon the  
2 Attorney General or any other department or agency of government  
3 to investigate any matter.

4 SEC. 11. Section 8548.9 of the Government Code is amended  
5 to read:

6 8548.9. (a) The State Auditor shall, by January 15th of each  
7 year, report to the Joint Legislative Budget Committee, the Joint  
8 Legislative Audit Committee, and the Department of Finance with  
9 respect to each recommendation he or she has made based on an  
10 audit or investigation that was reported more than one year ~~ago,~~  
11 ~~is more than one year old,~~ *prior* and that has not been fully  
12 implemented by the affected agency.

13 (b) The report shall clearly identify the state agency audited or  
14 investigated, the audit or investigation that contained the  
15 recommendation, a brief description of the recommendation, the  
16 date it was issued, and the most recent explanation provided by  
17 the agency to the State Auditor on the status of the  
18 recommendation.

19 (c) Any state agency that is notified by the State Auditor that it  
20 has not fully implemented a recommendation made pursuant to  
21 this chapter more than one year prior, shall do either of the  
22 following:

23 (1) Provide a written report to the State Auditor, the respective  
24 policy committees and budget subcommittees of the Assembly  
25 and Senate with oversight of the agency, and the Department of  
26 Finance, explaining why the audit recommendation or investigation  
27 has not been fully implemented.

28 (2) Notify all entities described in subdivision (a) that it will  
29 begin implementing the audit recommendation or investigation  
30 recommendation within 90 days of the notification by the State  
31 Auditor, and include the estimated date of full implementation.

32 SEC. 12. The provisions enacted in this act shall impose no  
33 cost on the state and shall be implemented solely using existing  
34 resources.